

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH CHAD SCHUCHMANN D/B/A SCHUCHMANN TRANSPORT D/B/A
SCHUCHMANN FARM

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor" or "ELC"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Chad Schuchmann d/b/a Schuchmann Transport d/b/a Schuchmann Farm ("Schuchmann"), pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences¹ in the sums of the Estimated Net Exposure without further order of the Court.

4. On December 27, 2012, the Trustee commenced Adversary Proceeding No. 12-59155 against Schuchmann and filed his First Amended Complaint on February 6, 2013.

5. Schuchmann was the branch manager of ELC Branch 28 located in Bois d'Arc, Missouri and was also a vendor, supplier, customer or otherwise maintained a business relationship with ELC or its affiliates.

6. The Trustee's First Amended Complaint sought to avoid and recover for the estate alleged preferential transfers from ELC to Schuchmann in the aggregate sum of no less than \$272,726.90 and, sought, in the alternative to avoid and recover fraudulent conveyances from ELC to Schuchmann within two years of the Petition Date in the aggregate sum of no less than \$336,369.56.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

7. In addition, the First Amended Complaint sought to enforce payment on a Promissory Note executed by Schuchmann and delivered to the Debtor on or about October 1, 2005 in the principal amount of \$175,000.00; enforce payment on a Promissory Note executed by Schuchmann and delivered to Debtor on or about August 25, 2010 in the principal amount of \$450,649.05; and enforce payment on a Promissory Note executed by Schuchmann and delivered to Debtor on or about July 30, 2009 in the principal amount of \$922,597.45.

The Settlement

8. The following is a summary of the key provisions of the Settlement Agreement. Parties should refer to the Settlement Agreement for a full explanation of the proposed settlement.

9. Pursuant to the Settlement Agreement, Schuchmann shall pay to the Trustee the total sum of \$175,000.00 (one lump sum payment of \$50,000.00 with the remaining balance of \$125,000.00 paid in three (3) yearly installments) (the "Settlement Amount") in full and final settlement and satisfaction of the Released Claims, as that term is defined in the Settlement Agreement.

10. As security for payment of the Settlement Amount, Schuchmann shall execute an agreed judgment against Schuchmann and in favor of the Trustee in the amount of Two Million One Hundred Nine Thousand Eight Hundred Forty-Eight and 12/100 Dollars (\$2,109,848.12), which document will be held by counsel for the Trustee and will not be filed with the Court or recorded in any county unless and until the occurrence of an Event of Default (as defined in Section 1(b) of the Settlement Agreement).

11. In negotiation of the Settlement Agreement, the Trustee advises that, apart from assertion of defenses to the claims and to avoid the cost, expense, and delay of litigation, Schuchmann also demonstrated an inability to pay any substantial judgment against him. The collection issue ultimately became the central and overwhelming factor driving the settlement negotiations. Counsel for the Trustee performed diligent review of financial records provided by Schuchmann. Schuchmann provided unaudited personal financial statements, account statements, and other evidence as to his financial status. In addition, Schuchmann provided a sworn affidavit as to his financial condition ("Financial Disclosure Affidavit") (due to the confidential financial information, the Financial Disclosure Affidavit is redacted from the Settlement Agreement filed with this Motion). The Trustee relied on the representations in the Financial Disclosure Affidavit, and undertook to protect the interests of the Debtor's estate in the event of material omissions or misrepresentations contained in the Financial Disclosure Affidavit. To that end, Section 8 of the Settlement Agreement nullifies and voids the Settlement Agreement if the Trustee discovers that Schuchmann has made a fraudulent or otherwise a material misrepresentation concerning his financial position.

12. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

13. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Schuchmann pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval

of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

Basis for Relief

14. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

15. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. It is the Trustee's view that the estate would incur significant costs and expenses in litigating the claims against Schuchmann. Ultimately, and in reliance on the financial statements, the Financial Disclosure Affidavit, other records and evidence produced, and the Trustee's counsel's own investigation, the Trustee believes that the Settlement Amount represents the highest amount that the Trustee could recover and collect from Schuchmann when factoring in the costs of litigation and the financial condition of Schuchmann.

16. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Jay P. Kennedy
Jay P. Kennedy (#5477-49)
Counsel for James A. Knauer,
Chapter 11 Trustee
111 Monument Circle, Suite 900
Indianapolis, IN 46204-5125
Telephone: (317) 777-7428
jpk@kgrlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt davidabt@mwt.net

Amelia Martin Adams
aadamsm@dlgfir.com,
dlgecf@dlgfir.com;dlgecf@gmail.com

John W Ames james@bgdlegal.com,
smays@bgdlegal.com;tmills@bgdlegal.com

Kay Dee Baird kbaird@kdlegal.com,
pdidandeh@kdlegal.com

Christopher E. Baker
cbaker@thbklaw.com,
thignight@thbklaw.com;twilkerson@thbklaw.com

Robert A. Bell rabell@vorys.com,
dmchilelli@vorys.com
C. R. Bowles
cbowles@bgdlegal.com,
smays@bgdlegal.com;cjenkins@bgdlegal.com

David W. Brangers
dbrangers@lawyer.com

Steven A. Brehm
sbrehm@bgdlegal.com,
bbaumgardner@bgdlegal.com;smays@bgdlegal.com

Steven A. Brehm
sbrehm@bgdlegal.com,
bbaumgardner@bgdlegal.com;smays@bgdlegal.com

Kent A Britt kabritt@vorys.com,
cbkappes@vorys.com;dfhine@vorys.com;tbfinney@vorys.com

Kayla D. Britton
kayla.britton@faegrebd.com,
cindy.wondra@faegrebd.com;sarah.herendeen@faegrebd.com

Joe Lee Brown
Joe.Brown@Hardincounty.biz

Lisa Koch Bryant
courtmail@fbhlaw.net

John R. Burns
john.burns@faegrebd.com,
sandy.rhoads@faegrebd.com;oliana.nansen@faegrebd.com

James M. Carr
jim.carr@faegrebd.com,
sarah.herendeen@faegrebd.com;becky.turner@faegrebd.com

John R. Carr jrccii@acs-law.com,
sfinnerty@acs-law.com

Deborah Caruso
dcaruso@daleeke.com,
mtheisen@daleeke.com

Ben T. Caughey
ben.caughey@icemiller.com

Bret S. Clement bclement@acs-law.com, sfinnerty@acs-law.com

Joshua Elliott Clubb
joshclubb@gmail.com

Jason W. Cottrell
jwc@stuartlaw.com,
jbr@stuartlaw.com

Kirk Crutcher kcrutcher@mcs-law.com, jparsons@mcs-law.com

Jack S Dawson
jdawson@millerdollarhide.com,
jseeger@millerdollarhide.com;receptionist@millerdollarhide.com;chall@millerdollarhide.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com,
sandy.engle@faegrebd.com;sarah.herendeen@faegrebd.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com,
sandy.engle@faegrebd.com;sarah.herendeen@faegrebd.com

Laura Day DelCotto
ldelcotto@dlgfir.com,
dlgecf@dlgfir.com;dlgecf@gmail.com

David Alan Domina
dad@dominalaw.com,
KKW@dominalaw.com;efiling@dominalaw.com

Daniel J. Donnellon
ddonnellon@ficlaw.com,
knorwick@ficlaw.com

Trevor L. Earl tearl@rwsvlaw.com

Shawna M Eikenberry
shawna.eikenberry@faegrebd.com,
sarah.herendeen@faegrebd.com

Shawna M Eikenberry
shawna.eikenberry@faegrebd.com,
sarah.herendeen@faegrebd.com

Jeffrey R. Erler jerler@ghjhlaw.com,
lbell@ghjhlaw.com;ldelcore@ghjhlaw.com

William K. Flynn
wkflynn@straustroy.com,
fmtuttle@straustroy.com;rlshapiro@straustroy.com

William K. Flynn
wkflynn@straustroy.com,
fmtuttle@straustroy.com;rlshapiro@straustroy.com

Robert H. Foree
robertforee@bellsouth.net

Sandra D. Freeburger
sfreeburger@dsf-atty.com,
mbaker@dsf-atty.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com,
mbaker@dsf-atty.com

Peter M Gannott
pgannott@gannottlaw.com,
paralegal@gannottlaw.com;gannottlaw@gmail.com

Melissa S. Giberson
msgiberson@vorys.com

Thomas P Glass
tpglass@straustroy.com

Jeffrey J. Graham
jgraham@taftlaw.com,
ECFClerk@taftlaw.com;dwineinger@taftlaw.com;aolave@taftlaw.com

Jeffrey J. Graham
jgraham@taftlaw.com,
ECFClerk@taftlaw.com;dwineinger@taftlaw.com;aolave@taftlaw.com

Patrick B Griffin
patrick.griffin@kutakrock.com,
stephanie.brockman@kutakrock.com

Terry E. Hall
terry.hall@faegrebd.com,

sharon.korn@faegrebd.com;sarah.h
erenden@faegrebd.com

Paul M. Hoffmann
phoffmann@stinson.com

John David Hoover
jdhoover@hooverhull.com

John Huffaker
john.huffaker@sprouselaw.com,
lynn.acton@sprouselaw.com;rhonda.
rogers@sprouselaw.com

Jeffrey L Hunter
jeff.hunter@usdoj.gov,
USAINS.ECFBankruptcy@usdoj.gov

Jay Jaffe jay.jaffe@faegrebd.com,
sarah.herenden@faegrebd.com

Jay Jaffe jay.jaffe@faegrebd.com,
sarah.herenden@faegrebd.com

James Bryan Johnston
bjtexas59@hotmail.com,
bryan@ebs-law.net

Todd J. Johnston
tjohnston@mcjllp.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Edward M King tking@fbtlaw.com,
dgioffre@fbtlaw.com

James A. Knauer jak@kgrlaw.com,
tjf@kgrlaw.com

James A. Knauer jak@kgrlaw.com,
tjf@kgrlaw.com

Erick P Knoblock
eknoblock@daleeke.com,
dwright@daleeke.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Randall D. LaTour
RDLatour@vorys.com,
khedwards@vorys.com;bjtobin@vor
ys.com

David A. Laird
david.laird@moyewwhite.com,
lisa.oliver@moyewwhite.com;deanne.
stoneking@moyewwhite.com

David L. LeBas
dlebas@namanhowell.com,
koswald@namanhowell.com

Martha R. Lehman
mlehman@kdlegal.com,
crbpgpleadings@kdlegal.com;brequ
enes@kdlegal.com

Scott R Leisz sleisz@bgdlegal.com,
disom@bgdlegal.com

Elliott D. Levin robin@rubin-levin.net,
edl@trustesolutions.com;edl@truste
solutions.net

Elliott D. Levin edl@rubin-levin.net,
atty_edl@trustesolutions.com

Elliott D. Levin edl@rubin-levin.net,
atty_edl@trustesolutions.com

Kim Martin Lewis
kim.lewis@dinslaw.com,
lisa.geeding@dinslaw.com;patrick.bu
rns@dinslaw.com

James B. Lind jblind@vorys.com

Karen L. Lobring lobring@msn.com

John Hunt Lovell john@lovell-
law.net, sabrina@lovell-
law.net;shannon@lovell-
law.net;paula@lovell-law.net

John Hunt Lovell john@lovell-
law.net, sabrina@lovell-
law.net;shannon@lovell-
law.net;paula@lovell-law.net

Harmony A Mappes
harmony.mappes@faegrebd.com,
sarah.herenden@faegrebd.com

Harmony A Mappes
harmony.mappes@faegrebd.com,
sarah.herenden@faegrebd.com

John Frederick Massouh
john.massouh@sprouselaw.com

Michael W. McClain
mmccclain@mcclaindeweese.com,
larmstrong@mcclaindeweese.com

Kelly Greene McConnell
lisahughes@givenspursley.com

James Edwin McGhee
mcghee@derbycitylaw.com,

SeillerWatermanBankruptcymyecf@
gmail.com;belliott@derbycitylaw.com
;patenaude@derbycitylaw.com;canto
r@derbycitylaw.com

Brian H Meldrum
bmeldrum@stites.com

William Robert Meyer
rmeyer@stites.com

Kevin J. Mitchell
kevin.mitchell@faegrebd.com,
cyndy.maucher@faegrebd.com;olian
a.nansen@faegrebd.com

Terrill K. Moffett
kendalcantrell@moffettlaw.com

Christie A. Moore cm@gdm.com,
ljs2@gdm.com

Allen Morris amorris@stites.com,
dgoodman@stites.com

Allen Morris amorris@stites.com,
dgoodman@stites.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com,
ecf@crowedunlevy.com;karen.martin
@crowedunlevy.com;karol.brown@c
rowedunlevy.com

Erin Casey Nave
enave@taftlaw.com,
ecfclerk@taftlaw.com;aolave@taftla
w.com

Erin Casey Nave
enave@taftlaw.com,
ecfclerk@taftlaw.com;aolave@taftla
w.com

Matthew Daniel Neumann
mneumann@hchlaw.com

Walter Scott Newbern
wsnewbern@msn.com

Walter Scott Newbern
wsnewbern@msn.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com,
amanda.castor@faegrebd.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com,
amanda.castor@faegrebd.com

Matthew J. Ochs
kim.maynes@moyewwhite.com

Jessica Lynn Olsheski
jessica.olsheski@justice-law.net,
julie.streich@justice-law.net

Michael Wayne Oyler
moyler@rwsvlaw.com

Ross A. Plourde
ross.plourde@mcafeetaft.com,
afton.shaw@mcafeetaft.com

Brian Robert Pollock
bpollock@stites.com

Brian Robert Pollock
bpollock@stites.com

Wendy W Ponader
wendy.ponader@faegrebd.com,
sarah.herenden@faegrebd.com

Wendy W Ponader
wendy.ponader@faegrebd.com,
sarah.herendeen@faegrebd.com

Timothy T. Pridmore
tpridmore@mcjllp.com,
lskibell@mcjllp.com

Anthony G. Raluy traluy@fbhlaw.net

Eric C Redman
ksmith@redmanludwig.com,
kzwickel@redmanludwig.com;myecf
mailrl@gmail.com

Eric C Redman
ksmith@redmanludwig.com,
kzwickel@redmanludwig.com;myecf
mailrl@gmail.com

Eric W. Richardson
ewrichardson@vorys.com,
bjtobin@vorys.com

Joe T. Roberts
jratty@windstream.net

David Cooper Robertson
crobertson@stites.com,
docketclerk@stites.com

Mark A. Robinson
mrobinson@vhlaw.com

Mark A. Robinson
mrobinson@vhlaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

John M. Rogers johnr@rubin-
levin.net, susan@rubin-
levin.net;atty_rogers@bluestylus.co
m

John M. Rogers johnr@rubin-
levin.net, susan@rubin-
levin.net;atty_rogers@bluestylus.co
m

Joseph H Rogers
jrogers@millerdollarhide.com,
cdow@millerdollarhide.com

James E Rossow jim@rubin-
levin.net, susan@rubin-
levin.net;ATTY_JER@trustesolutions
.com

Steven Eric Runyan
ser@kgrlaw.com

Niccole R. Sadowski
nsadowski@thbklaw.com,
btaylor@thbklaw.com;twilkerson@th
bklaw.com

Thomas C Scherer
tscherer@bgdlegal.com,
mmcclain@bgdlegal.com

Stephen E. Schilling
seschilling@straussstroy.com

Ivana B. Shallcross
ishallcross@bgdlegal.com,
smays@bgdlegal.com;tmills@bgdleg
al.com;acoates@bgdlegal.com

Ivana B. Shallcross
ishallcross@bgdlegal.com,
smays@bgdlegal.com;tmills@bgdleg
al.com;acoates@bgdlegal.com

Suzanne M Shehan
suzanne.shehan@kutakrock.com,
nancy.johnson@kutakrock.com;joy.l
ehner@kutakrock.com

James E. Smith
jsmith@smithakins.com,
legalassistant@smithakins.com

William E Smith wsmith@k-
glaw.com, pballard@k-glaw.com

Amanda Dalton Stafford
ads@kgrlaw.com, jli@kgrlaw.com

Amanda Dalton Stafford
ads@kgrlaw.com, jli@kgrlaw.com

Robert K Stanley
robert.stanley@FaegreBD.com

Joshua N. Stine kabritt@vorys.com

Andrew D Stosberg
astosberg@lloydmc.com,
bmarks@lloydmc.com

Matthew R. Strzynski
indyattorney@hotmail.com,
mattstrzynski@mac.com

Meredith R. Theisen
mtheisen@daleeke.com

John M. Thompson
john.thompson@crowedunlevy.com,
jody.moore@crowedunlevy.com

Kevin M. Toner
kevin.toner@faegrebd.com,
judy.ferber@faegrebd.com;crystal.ha
nsen@faegrebd.com

Kevin M. Toner
kevin.toner@faegrebd.com,
judy.ferber@faegrebd.com;crystal.ha
nsen@faegrebd.com

Christopher M. Trapp ctrapp@rubin-
levin.net, lking@rubin-levin.net

Chrisandrea L. Turner
clturner@stites.com

U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

Andrew James Vandiver
avandiver@aswdlaw.com,
sgoins@aswdlaw.com;jrobb@aswdl
aw.com

Andrew James Vandiver
avandiver@aswdlaw.com,
sgoins@aswdlaw.com;jrobb@aswdl
aw.com

Andrea L Wasson
andrea@wassonthornhill.com

Jennifer Watt jwatt@kgrlaw.com,
tjf@kgrlaw.com

Jennifer Watt jwatt@kgrlaw.com,
tjf@kgrlaw.com

Stephen A. Weigand
sweigand@ficlaw.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov,
Charles.R.Wharton@usdoj.gov

Sean T. White
swhite@hooverhull.com,
vwilliams@hooverhull.com

Michael Benton Willey
michael.willey@ag.tn.gov

Jason P Wischmeyer
jason@wischmeyerlaw.com,
tammy@wischmeyerlaw.com

Chad Duane Wuerz
chad@wuerzlaw.com,
joe@wuerzlaw.com;zach@wuerzla
w.com;michele@wuerzlaw.com;wen
dy@wuerzlaw.com

Chad Duane Wuerz
chad@wuerzlaw.com,
joe@wuerzlaw.com;zach@wuerzla
w.com;michele@wuerzlaw.com;wen
dy@wuerzlaw.com

Jessica E. Yates jyates@swlaw.com,
docket_den@swlaw.com;mmcclery
@swlaw.com

James T Young james@rubin-
levin.net, lking@rubin-
levin.net;kim@rubin-
levin.net;atty_young@bluestylus.co
m

/s/ Jay P. Kennedy

Jay P. Kennedy, Attorney No. 5477-49
Counsel for James A. Knauer, Trustee

KROGER, GARDIS & REGAS, LLP

111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-5125
(317) 692-9000 Telephone